

1 ANDRÉ BIROTTÉ JR.
2 United States Attorney
3 ROBERT E. DUGDALE
4 Assistant United States Attorney
5 Chief, Criminal Division
6 JAMES M. LEFT (Cal. SBN: 173382)
7 Special Assistant United States Attorney
8 General Crimes Section
9 1200 United States Courthouse
10 312 North Spring Street
11 Los Angeles, California 90012
12 Telephone: (213) 894-0511
13 Facsimile: (213) 894-0141
14 Email: jim.left@usdoj.gov

15 Attorneys for Plaintiff
16 United States of America

17 UNITED STATES DISTRICT COURT
18
19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,) CR No. 11-436-MRW
21)
22 Plaintiff,) GOVERNMENT'S OPPOSITION TO
23) DEFENDANTS' MOTION TO SUPPRESS
24) EVIDENCE; DECLARATION OF LEROI
25) O'BRIEN; DECLARATION OF CRAIG
26) PORTER; EXHIBITS
27)
28 v.) STATUS CONFERENCE AND
29) EVIDENTIARY HEARING:
30) Oct. 3, 2011, at 3:00 p.m.
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The government's opposition is based upon the attached memorandum of points and authorities, the files and records in this case, and any other evidence or argument that the Court may wish to consider during the next scheduled hearing.

DATED: September 20, 2011 Respectfully submitted,

ANDRÉ BIROTTE JR.
United States Attorney

ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division

Attorneys for Plaintiff
United States of America

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22	<u>Nix v. Williams</u> , 467 U.S. 431 (1984)
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 On May 13, 2011, the government filed an information,
5 charging defendants HUGO RENE BAQUIAX ("BAQUIAX") and JOEL CIRILO
6 SOSA HERNANDEZ ("SOSA") with hiring and continuing to employ
7 illegal aliens, in violation of Title 8, United States Code,
8 Section 1324a(a)(1)(A), (a)(2), and (f)(1). On September 4,
9 2011, defendants filed a motion to suppress evidence that the Los
10 Angeles Police Department ("LAPD") seized from the 907 Club
11 during the execution of a search warrant on November 5, 2010.

12 As explained below, defendants' motion to suppress fails on
13 multiple bases. Defendants failed to establish that they have
14 standing to contest the search warrant. Defendants also failed
15 to establish that they have an expectation of privacy as to the
16 false identification documents seized from many of the female
17 employees of the 907 Club.

18 Defendants failed to establish that LAPD officers acted in
19 bad faith in seeking the search warrant or that there was a lack
20 of probable cause in support of the application for the warrant.
21 Defendants also failed to show that the search warrant was overly
22 broad or that LAPD officers improperly seized evidence outside of
23 the scope of the warrant. Furthermore, the LAPD could have
24 seized a large portion of the documentation under the plain view
25 doctrine. Even if LAPD officers acted in violation of
26 defendants' constitutional rights, which they did not, the
27 evidence in question is still admissible under the inevitable
28 discovery exception to the exclusionary rule.

Finally, defendants claim that evidence seized should have been returned to the 907 Club instead of turned over to ICE pursuant to administrative and grand jury subpoenas. This argument also fails, because even if defendants had an expectation of privacy as to the documents, that expectation ended once the documents were lawfully in LAPD custody.

II.

RELEVANT FACTS OF THE CASE

The 907 Club was a "hostess club" in downtown Los Angeles that generally catered to Latin American men. (Declaration of Craig Porter, at 1). Customers paid to talk and dance with the club's hostesses, many of whom were illegal aliens. (Id.). Defendants BAQUIAX and SOSA were two of the managers at the club. (Id.).

A. LAPD INVESTIGATION OF THE 907 CLUB

Beginning in June 2010, LAPD investigated the 907 Club for prostitution and illegal gambling. (Declaration of LeRoi O'Brien, at 1-2). On June 25, 2010, three LAPD officers conducted an investigation to determine whether the 907 Club was operating in compliance with its Conditional Use Permit. (Exhibit A, LAPD search warrant and affidavit at Bates Stamped 7668).¹ At that time, the officers discovered seven female employees who did not possess valid State of California identification cards or drivers licenses. (Id.). Employing individuals without valid identification was a violation of the

¹ In support of their motion to suppress, defendant attached a copy of the LAPD search warrant, which is marked as Exhibit 1. This copy of the warrant is incomplete, because page 7 is missing.

1 club Conditional Use Permit, condition numbers 12 and 14. (Id.;
2 Exhibit B, 907 Club Conditional Use Permit, at Bates Stamped
3 6668). The LAPD officers then spoke with the club's management,
4 who provided copies of identification cards for various
5 employees. (Exhibit A, at 7668). These cards were not valid,
6 because every number on the copies of the cards presented did not
7 belong to the person listed on each card. (Id.).

8 On July 22, 2010, two undercover LAPD officers entered the
9 907 Club and encountered a female employee, who told the officers
10 that lewd acts and prostitution occurred at the club. (Id. at
11 7669). The employee also stated that these acts cost more than
12 the normal hostess rate. (Id.). Acts of prostitution were in
13 violation of the club's Conditional Use Permit, conditions 14 and
14 15. (Exhibit B, at 6668-69).

15 On July 30, 2010, the same two undercover LAPD officers
16 again entered the 907 Club, when the club was advertising the
17 "Bikini Girls Show." (Exhibit A, at 7669). Inside a male
18 restroom, one officer found used condoms on the floor. (Id.).
19 The officers also observed two seated males receiving lap dances
20 during the "Bikini Girls Show." (Id.). The two men were allowed
21 to digitally penetrate the dancer's vaginas. (Id.). After the
22 club's security staff collected money from these two men, two
23 other men were allowed to digitally penetrate the women. (Id.).

24 On July 30, 2010, one undercover officer observed male
25 customers playing pool for money. (Exhibit A, at 7669). The
26 officer then played in a subsequent game and lost \$20. (Id.).
27 This activity occurred within sight of the club's staff. (Id. at
28 7669-70). This activity was also in violation of the club's

1 Conditional Use Permit, condition number 14. (Exhibit B, at
2 6668). On August 11, 2010, four undercover officers observed
3 male customers gamble at the pool table, and one officer played a
4 pool game for money. (Id. at 7670). This activity also occurred
5 within sight of the club's staff. (Id.). Undercover officers
6 again witnessed illegal gambling at the pool tables within sight
7 of the club's staff on August 20, 2010, and August 25, 2010.
8 (Id.).

9 On November 2, 2010, LAPD officers spoke with a Confidential
10 Informant ("CI"). (Exhibit A, at 7671). The CI stated that she
11 was hired at the 907 Club and provided false identification upon
12 a manager's request.² (Id.). While working at the club, the CI
13 observed the "Bikini Girls Show." (Id.). During the show,
14 female dancers exposed their breasts and allowed male customers
15 to digitally penetrate their vaginas. (Id.). The club's
16 security staff collected money from the men and gave it to the
17 cashier. (Id.).

18 B. THE LAPD SEARCH WARRANT

19 Based upon all the foregoing, LAPD filed an application for
20 a search warrant. (See generally Exhibit A). On November 2,
21 2010, a Superior Court judge issued the warrant based upon a
22 finding of probable cause. (Id. at 7666). The search warrant
23 authorized LAPD to search "[a]ll employee records maintained by
24 the club's management, ledgers and records with identification of
25 employees and work schedules." (Id. at 7667). LAPD was also
26 authorized to search electronic storage devices for "records of

27
28 ² For a more complete description of the hiring of the CI,
see pages 6 to 14 of the affidavit in support of the complaint.

1 payment regarding prostitution or gambling." (Id.). LAPD was
 2 further authorized to search the dressing rooms and lockers of
 3 the female dancers to find items "used for the purpose of
 4 prostitution." (Id.).

5 C. EXECUTION OF THE LAPD SEARCH WARRANT

6 On November 5, 2010, LAPD officers executed the search
 7 warrant against the 907 Club.³ (Exhibit C, LAPD investigative
 8 report, at Bates Stamped 6645). Upon entry into the club,
 9 officers observed four female dancers wearing bikinis, and they
 10 were providing lap dances. (Id. at 6646). This adult
 11 entertainment was in violation of the club's Conditional Use
 12 Permit, condition number 13. (Id.; Exhibit B, at 6668). The
 13 security guards collected money from the patrons who received the
 14 lap dances, and defendant BAQUIAX managed the bikini show.
 15 (Exhibit C, at 6646).

16 After the location was secured, LAPD officers began to check
 17 the female employees for valid identification. (Exhibit C, at
 18 6647). Pursuant to the warrant, the officers also checked the
 19 employee applications on file for each employee, which contained
 20 photocopies of the identification documents used to secure
 21 employment. (Id.). Out of approximately 85 female employees
 22 working at the 907 Club that evening, LAPD determined that 19
 23 women used false identification documents to obtain employment.
 24 (Declaration of O'Brien, at 3-4; Exhibit C, at 6647-48, 6651).

25
 26 ³ Earlier the same evening, undercover LAPD officers
 27 entered the 907 Club, where they observed male customers playing
 28 pool for money. (Exhibit C, at Bates Stamped 6644-45). These
 men were arrested for illegal gambling at the same time that the
 officers executed the warrant. (Id.).

1 LAPD also discovered that another 58 female employees possessed
2 false identification cards, which were stored in their lockers.
3 (Exhibit C, at 6648-49, 6651). These 77 women were arrested and
4 booked into LAPD custody. (Declaration of O'Brien, at 4).

5 LAPD seized and booked into evidence all the fraudulent
6 identification cards, which included California identification
7 cards, resident alien cards, social security cards, and Mexican
8 identification cards. (Exhibit D, LAPD property report, at Bates
9 Stamped 6964-68).

10 At the same time that the female employees were being
11 interviewed, LAPD also located and seized numerous business
12 records that were located in two offices at the 907 Club.⁴
13 (Declaration of O'Brien, at 4; Exhibit D, at 6963-64). These
14 records included over 800 employment applications for the female
15 employees. (Declaration of Porter, at 3). These records also
16 included payroll records, time cards, daily sales sheets, and
17 bank records. (Declaration of O'Brien, at 4). LAPD also seized
18 a computer that was located in one of the offices. (Id.).

19 D. INITIAL ICE INTERVIEWS OF THE FEMALE EMPLOYEES

20 Following the arrest of the female employees, several ICE
21 agents interviewed these women. (Declaration of Porter, at 3-4).
22 At least 40 women admitted that they did not have valid
23 identification documents. (Id. at 4). These women also admitted
24 that the managers of the 907 Club, including defendants BAQUIAX
25 and SOSA, hired them even though the managers knew the women did

26
27 ⁴ In their motion to suppress, defendants claim that LAPD
28 took all of the 907 Club's business records. (Defendant's
motion, at 25). This is incorrect. LAPD only seized about 75%
of the documents. (Declaration of O'Brien, at 4).

1 not have valid identification documents or authorization to work
2 in the United States. (Id.).

3 E. TRANSFER OF DOCUMENTS FROM LAPD TO ICE

4 At the time LAPD executed the search warrant on November 5,
5 2010, ICE had an ongoing investigation into the 907 Club
6 concerning the hiring and continuing to employ illegal aliens.
7 (Declaration of Porter, at 2). In furtherance of its
8 investigation, on November 8, 2010, ICE issued an administrative
9 subpoena to LAPD, requesting the Form I-9s concerning the club's
10 employees.⁵ (Exhibit E, ICE administrative subpoena, at Bates
11 Stamped 6979).

12 On December 23, 2010, a grand jury subpoena was issued on
13 behalf of ICE, requesting that LAPD produce copies of
14 identification cards seized during the execution of the search
15 warrant. (Exhibit F, Grand jury subpoena, dated December 23,
16 2010, at Bates Stamped 6975). The subpoena also requested that
17 the LAPD produce copies of its reports concerning the execution
18 of the search warrant and arrest of any employees. (Id.).

19 On February 2, 2011, a second grand jury subpoena was issued
20 on behalf of ICE. (Exhibit G, Grand jury subpoena, dated
21 February 2, 2011, at Bates Stamped 6977). This subpoena
22 requested that LAPD produce evidence seized at the 907 Club,
23 including identification cards, employee records, and computers.
24 (Id.).

25 //

27 ⁵ An employer is required to complete a Form I-9 as part of
28 the process to verify that an employee is authorized to work in
the United States. 8 U.S.C. § 1324a(b)(1)(A); 8 C.F.R. § 274a.2.

On February 15, 2011, a Superior Court judge issued an order, allowing LAPD to release property in its custody to ICE. (Exhibit H, Superior Court order, at 2).⁶ Later on February 15, 2011, LAPD turned over documents to ICE.⁷ (Declaration of O'Brien, at 5; Declaration of Porter, at 5). If LAPD had returned the evidence to the 907 Club instead of turning it over to ICE, ICE would have sought a federal search warrant. (Declaration of Porter, at 5).

III.

ARGUMENT

A. DEFENDANTS FAILED TO ESTABLISH THAT THEY HAVE STANDING TO
CHALLENGE THE LAPD SEARCH WARRANT

Defendants do not submit any declarations in support of their motion to suppress. Defendants instead argue in their motion, submitted by their counsel, that "the government treats the defendants as having direct responsibility for the creation, maintenance and record-keeping for the business records and files of the Club" and that defendants had custody and control over these records. (Defendant's motion at 13-14). Thus, defendants

⁶ Exhibit H was only recently obtained as part of the preparation for the instant opposition to the motion to suppress.

⁷ In their motion to suppress, defendants at first claim that over 7,000 pages of discovery have been produced, and the vast majority, if not all, of the documents concerned business records and computer files from the 907 Club. (Defendants' motion at 4). Defendants later claim that approximately 7,500 pages of materials have been produced, all of which consisted of documents and computer files from the club. (*Id.* at 13). Actually, to date, the government has produced 8,562 pages of discovery. At least 1,500 pages consist of interviews of the 907 Club's female employees and redacted copies of their A-Files. The government has also produced hundreds of pages of records consisting of ICE investigative reports and related documents.

1 claim they have standing to challenge the search warrant "based
 2 entirely upon the government's allegations and theory of
 3 prosecution." (Id. at 14). As the following shows, defendants'
 4 arguments regarding standing are in error.

5 1. DEFENDANTS FAILED TO ESTABLISH STANDING ON PROCEDURAL
 6 GROUNDS

7 Defendants' failure to submit any declarations in support of
 8 their motion violates this Court's local rules. Specifically,
 9 the local rules provide:

10 A motion to suppress shall be supported by a
 11 declaration on behalf of the defendant, setting forth
 12 all facts then known upon which it is contended the
 13 motion should be granted. The declaration shall
 14 contain only such facts as would be admissible in
 15 evidence and shall show affirmatively that the
 16 declarant is competent to testify to the matters stated
 17 therein.

18 Local Criminal Rule 12-1.1 (emphasis added).

19 Since defendants did not submit any declarations, the Court
 20 may deny the motion to suppress on this ground alone. See United
21 States v. Wardlow, 951 F.2d 1115, 1116 (9th Cir. 1991) (per
 22 curiam) (determining that the district court did not abuse its
 23 discretion in denying a request for an evidentiary hearing,
 24 because the defendant failed to submit a declaration in support
 25 of his motion to suppress, in violation of the local rules); see
26 also United States v. Gillette, 383 F.2d 843, 848 (2d Cir. 1967)
 27 (indicating that denial of the motion to suppress was
 28 appropriate, because defense counsel's affidavit in support did
 not allege any personal knowledge of the facts at issue); United
States v. Marquez, 367 F. Supp. 2d 600, 603 (S.D.N.Y. 2005)
 (reasoning that a motion to suppress must be supported by an

1 affidavit).

2 2. DEFENDANTS FAILED TO ESTABLISH STANDING ON SUBSTANTIVE
 3 GROUNDS

4 The Court may also reject defendants' claim of standing on
 5 substantive grounds. A person has standing to raise an alleged
 6 violation of his Fourth Amendment rights "only if there has been
 7 a violation 'as to him,' personally." United States v. SDI
 8 Future Health, Inc., 568 F.3d 684, 695 (9th Cir. 2009) (citing
 9 Mancusi v. DeForte, 392 U.S. 364, 367 (1968)). To properly
 10 challenge a search or seizure, a defendant has the burden to
 11 prove that he had a legitimate expectation of privacy and that
 12 the search or seizure violated that expectation. United States
 13 v. Lingefelter, 997 F.2d 632, 636 (9th Cir. 1993); United States
 14 v. Isaacs, 708 F.2d 1365, 1367 (9th Cir. 1983). As such, to
 15 invoke Fourth Amendment protections, a defendant must establish
 16 that a legitimate expectation of privacy by demonstrating a
 17 subjective expectation of privacy and an objectively reasonable
 18 expectation. Smith v. Maryland, 442 U.S. 735, 740 (1979); SDI
 19 Future Health, Inc., 568 F.3d at 695; United States v. Shyrock,
 20 342 F.3d 948, 978 (9th Cir. 2003).

21 A defendant may "have a legitimate expectation of privacy in
 22 a commercial area." United States v. Silva, 247 F.3d 1051, 1055
 23 (9th Cir. 2001). However, "[a]n expectation of privacy in
 24 commercial premises ... is different from, and [is] indeed less
 25 than, a similar expectation in an individual's home." Minnesota
 26 v. Carter, 525 U.S. 83, 90 (1998) (quoting New York v. Burger,
 27 482 U.S. 691, 700 (1987)).

28 //

1 If a person is merely present on another's commercial
 2 property, that person does not have a legitimate expectation of
 3 privacy at that location. United States v. Gamez-Orduno, 235
 4 F.3d 453, 458 (9th Cir. 2000). Additionally, managerial
 5 authority alone is not sufficient to establish standing. SDI
 6 Future Health, Inc., 568 F.3d at 696 (citing United States v.
 7 Cella, 568 F.2d 1266, 1270, 1283 (9th Cir. 1977)). On the other
 8 hand, an individual has a reasonable expectation of privacy in
 9 private work areas for that individual's exclusive use. United
 10 States v. Gonzalez, 328 F.3d 543, 548 (9th Cir. 2003);
 11 Schowengardt v. General Dynamics Corp., 823 F.3d 1328, 1335 (9th
 12 Cir. 1987).

13 Whether a person has a reasonable expectation of privacy in
 14 his work place must be analyzed on a case by case basis as there
 15 are a "great variety of work environments." SDI Future Health,
 16 Inc., 568 F.3d at 695. In a commercial context, an individual
 17 may assert standing for an office for which the individual has
 18 exclusive use and for other areas upon considering the following
 19 factors:

20 (1) whether the item seized is personal property or
 21 otherwise kept in a private place separate from other
 22 work-related material; (2) whether the defendant had
 23 custody or immediate control of the item when officers
 24 seized it; and (3) whether the defendant took
 25 precautions on his own behalf to secure the place
 26 searched or things seized from any interference without
 27 his authorization.

28 Id. at 698 (footnotes omitted). Without a personal connection or
 29 exclusive use, a defendant cannot establish standing to challenge
 30 the search of a workplace. Id.

31 //

1 In the instant case, there is apparently no dispute that
2 none of the evidence seized is the personal property of either
3 defendant. Even in their motion to suppress, defendants made no
4 claims as to whether either defendant took any precautions to
5 secure any part of the 907 Club or any evidence contained
6 therein. Defendants instead merely assert that they have
7 standing due to their managerial status, which is an insufficient
8 ground. SDI Future Health, Inc., 568 F.3d at 696.

9 The pertinent question in this case is whether defendant had
10 exclusive use of the offices, where employee applications,
11 payroll records, and bank records were located. Defendants have
12 not made any assertions as to whether they had exclusive use of
13 these offices, and they cannot properly make such a claim.

14 Information obtained during interviews with the female
15 employees of the 907 Club indicate that defendants did not have
16 exclusive use of the two offices. The female employees stated
17 that four managers, including both defendants, shared the two
18 offices. (Declaration of Porter, at 5). The women also stated
19 that they saw employees and customers frequently enter these
20 offices. (Id.). The women gave the indication that Michelle
21 Hutchinson, one of the owners of the 907 Club, used these
22 offices. (Id.). Thus, defendants cannot establish exclusive
23 use, and accordingly, they failed to prove that they have
24 standing to challenge the LAPD search warrant as to evidence
25 seized from the offices.

26 //

27 //

1 B. DEFENDANTS DID NOT HAVE A EXPECTATION OF PRIVACY AS TO THE
2 FALSE IDENTIFICATION DOCUMENTS SEIZED AT THE 907 CLUB

3 Defendants also cannot establish standing to challenge
4 LAPD's seizure of the false identification documents that the
5 female employees possessed. Defendants had no expectation of
6 privacy in these documents, because they did not personally own
7 the documents. They belonged to the female employees. The
8 documents were also not under defendants' exclusive control, as
9 they were inside the lockers of the female employees. (Exhibit
10 C, at 6648-49, 6651). Since defendants cannot assert an
11 expectation of privacy vicariously, they do not have standing to
12 challenge the seizure of the false identification documents. See
13 United States v. Struckman, 603 F.3d 731, 746 (9th Cir. 2010);
14 Silva, 247 F.3d at 1055.⁸

15 C. DEFENDANTS' CLAIM THAT THE SEARCH WARRANT APPLICATION DID
16 NOT ESTABLISH PROBABLE CAUSE MUST FAIL

17 1. DEFENDANTS' CLAIM MUST FAIL ON PROCEDURAL GROUNDS

18 If a defendant makes no showing that a warrant was obtained
19 through a law enforcement officer's "intentional or reckless
20 misstatements of facts or deliberate omissions tending to
21 mislead" the issuing court, the evidence may not be suppressed,
22 even if probable cause for the warrant was lacking. United States

23
24
25
26 ⁸ Furthermore, while at the 907 Club, LAPD officers could
27 have requested identification from the female employees without
28 implicating any Fourth Amendment protections. See Hiibel v.
Sixth Judicial Dist. Court of Nevada, Humboldt County, 542 U.S.
177, 178 (2004); INS v. Delgado, 466 U.S. 210, 216 (1984).

1 v. Washington, 797 F.2d 1461, 1468 (9th Cir. 1986)⁹ (citing
 2 United States v. Leon, 468 U.S. 897, 922-25 (1984); United States
 3 v. Stanert, 762 F.2d 775, 781, amended, 769 F.2d 1410 (9th Cir.
 4 1985)).

5 In their motion, defendants make multiple allegations
 6 against LAPD and ICE. However, defendants never claim that in
 7 seeking the search warrant, the LAPD intentionally or reckless
 8 misstated any facts. Defendants also never claim that LAPD made
 9 deliberate omissions as part of an effort to mislead the Superior
 10 Court. Therefore, on this procedural ground alone, defendants'
 11 assertions that there was a lack or probable cause for a search
 12 warrant must fail.

13 2. DEFENDANTS' CLAIM MUST FAIL ON SUBSTANTIVE GROUNDS

14 A determination of probable cause must be upheld if under
 15 the "totality of the circumstances," the issuing court had a
 16 substantial basis for determining that probable cause existed to
 17 support the issuance of the search warrant. Illinois v. Gates,
 18 462 U.S. 213, 238 (1983); United States v. Fannin, 817 F.2d 1379,
 19 1381 (9th Cir. 1987). Further, the issuing court's finding of a
 20 "substantial basis" should be given great deference. Fannin, 817
 21 F.2d at 1381; United States v. Angulo-Lopez, 791 F.2d 1394, 1396
 22 (9th Cir. 1986).

23 In the instant case, defendants assert that there was
 24 insufficient evidence to establish probable cause for the search
 25

26 ⁹ In their motion to suppress, defendants cite to United
 27 States v. Washington, 782 F.2d 807 (9th Cir. 1986). (Defendants'
 28 motion, at 21, 22). These citations are inappropriate because
 the opinion was superseded by United States v. Washington, 797
 F.2d 1461, 1468 (9th Cir. 1986).

1 warrant. Defendants state that "LAPD knew there was no
2 prostitution or gambling at the Club." (Defendant's motion, at
3 12). Defendant also state that there was "nothing more than an
4 undercover officer playing pool with a club patron for money ...
5 and the exposure of intimate body parts during lap dancing."
6 (Id.). Later, defendants assert that the only evidence of
7 prostitution was that one occasion, LAPD officers found condoms
8 on the floor of a bathroom and saw the exposure of intimate body
9 parts. (Id. at 16-17).

10 Defendants misstate the facts that were presented to the
11 Superior Court judge, as stated in the search warrant. On four
12 occasions between July 30, 2010, and August 25, 2010, undercover
13 LAPD officers observed male customers playing pool for money.
14 (Exhibit A, at 7669-70). On two of these occasions, officers
15 played in a game for money. (Id.).

16 On all four occasions, this illegal gambling occurred within
17 sight of the club's staff. (Id. at 7669-70). Thus, there was
18 fair reason to believe that the 907 Club allowed and may even
19 have indirectly profited from illegal gambling within the
20 establishment. Thus, there was probable cause to believe that
21 violations of California law occurred as a result of this
22 activity. See CA Penal Code §§ 318 (place of prostitution or
23 illegal gambling), 330 (gambling), and 331 (owner permitting in-
24 house gambling).

25 Perhaps more importantly, there was evidence of prostitution
26 presented to the Superior Court. On July 22, 2010, a female
27 employee told undercover LAPD officer that lewd acts and
28 prostitution occurred at the club. (Exhibit A, at 7669). On

1 July 30, 2010, one undercover LAPD officers found used condoms on
2 a restroom floor, and two undercover officers observed multiple
3 males digitally penetrate female dancer's vaginas in exchange for
4 cash. (Id.). On November 2, 2010, a CI told LAPD officers that
5 while working at the club, she saw female dancers expose their
6 breasts and allow male customers to digitally penetrate their
7 vaginas in exchange for cash. (Id. at 7671).

8 Given the foregoing, there was ample evidence that acts of
9 prostitution were occurring at the 907 Club. The digital
10 penetration of female dancers for money amounted to lewd acts and
11 prostitution under California Penal Code Sections 647(a) (lewd
12 acts) and 647(b) (prostitution). See Pryor v. Municipal Court,
13 25 Cal.3d 238, 256 (1979) (touching of genitals for the purposes
14 of sexual arousal or gratification amounts to a lewd or dissolute
15 conduct under CA Penal Code § 647(a)); Wooten v. Superior Court,
16 93 Cal. App. 4th 422, 433 (4th Dist. 2001) (determining that CA
17 Penal Code § 647(b) requires sexual contact between the
18 prostitute and customer).

19 Since these acts of prostitution occurred in front of the
20 club's staff and the club collected money in exchange for these
21 acts, there was evidence of other violations of the California
22 Penal Code relating to prostitution. See CA Penal Code
23 §§ 266h(b) (pimping, receipt of earnings or proceeds), and 318
24 (place of prostitution or illegal gambling).

25 Given the foregoing, there was probable cause for the
26 issuance of the search warrant, because there was "a fair
27 probability that contraband or evidence of a crime w[ould] be
28 found in a particular place, based upon the totality of the

1 circumstances." United States v. SDI Future Health, Inc., 568
2 F.3d 684, 703 (9th Cir. 2009) (quotation and citations omitted).
3 Accordingly, this Court should find that the Superior Court had a
4 substantial basis for determining that probable cause existed to
5 support the issuance of the search warrant. Accordingly,
6 defendants' claim that probable cause was lacking must fail.

7 D. THE SEARCH WARRANT WAS NOT OVERLY BROAD

8 A search warrant must particularly describe the items to be
9 searched and seized and must give police officers objective
10 standards to distinguish items to be seized. SDI Future Health,
11 Inc., 568 F.3d at 702; Washington, 797 F.2d at 1471-72. A search
12 warrant is overly broad, if in listing the documents to be
13 seized, there is no indication of any alleged crime to which the
14 documents pertain. United States v. Kow, 58 F.3d 423, 427 (9th
15 Cir. 1995). However, the listing of the type of criminal
16 activity in relation to the documents sought is sufficient.
17 Washington, 797 F.2d at 1472 (concluding that in a search warrant
18 for business records, the "phrase 'involvement and control of
19 prostitution activity' is narrow enough to satisfy the
20 particularity requirement of the Fourth Amendment. It
21 effectively tells the officers to seize only items indicating
22 prostitution activity.") (citations omitted).

23 In their motion to suppress, defendants claim that the
24 search warrant was overly broad, because the warrant itself
25 allowed LAPD to seize "all records, electronics and computers."
26 (Defendant's motion at 21). Defendant also claims that since
27 there was no allegation in the search warrant that the 907 club
28 was "permeated with fraud," there was no justification for the

1 "wholesale taking" of such records. (Id.).

2 Defendants again misstate what appears in the actual search
3 warrant. The search warrant authorized LAPD to search "[a]ll
4 employee records maintained by the club's management, ledgers and
5 records with identification of employees and work schedules."
6 (Exhibit A, at 7667). LAPD was also authorized to search
7 electronic storage devices for "records of payment regarding
8 prostitution or gambling." (Id.). The warrant further allowed
9 the LAPD to search for items that are "used for the purpose of
10 prostitution." (Id.).

11 Given the forgoing, at a minimum, the warrant authorized a
12 search of items related to prostitution, which included any
13 records of payment to prostitutes or receipts of income derived
14 from prostitution that might be included in business records.
15 LAPD was also authorized to search for records identifying
16 employees who could be prostitutes. This was perfectly
17 reasonable given that certain women at the 907 Club were
18 engaging in prostitution. Since the warrant specifically limited
19 the search to documents and other items concerning gambling or
20 prostitution, the warrant was not overly broad. See Washington,
21 797 F.2d at 1472.

22 E. LAPD OFFICERS DID NOT EXCEED THE SCOPE OF THE WARRANT

23 Defendants also assert that LAPD officers exceeded the scope
24 of the warrant, because LAPD seized a very large volume of
25 documents. (Defendant's motion, at 30-31). Once again,
26 defendants' argument must fail.

27 The search and seizure of large quantities of materials is
28 justified if the material is within the scope of the search

1 warrant. United States v. Hayes, 794 F.2d 1348, 1355 (9th Cir.
2 1986). Non-incriminatory documents may also be examined to
3 determine whether they are among the documents that should be
4 seized. Id. at 1356 (citing Andresen v. Maryland, 427 U.S. 463,
5 482 n.11 (1976)). Furthermore, a generalized seizure of business
6 records may be justified if 1) there is probable cause to believe
7 that the entire business is merely a scheme to defraud or 2) all
8 business records are evidence of criminal activity. Kow, 58 F.3d
9 at 427.

10 Defendants apparently concede, at least to some extent, that
11 LAPD was authorized to examine the 907 Club's business records
12 off-site, because such an examination would have been too time-
13 consuming at the club. Thus, the taking of the large quantity of
14 materials within the scope of the warrant for review should not
15 be an issue.

16 Additionally, the warrant authorized the seizure of "[a]ll
17 employee records maintained by the club's management, ledgers and
18 records with identification of employees and work schedules."
19 (Exhibit A, at 7667). These records included 834 employment
20 applications for 907 Club employees. (Exhibit I, ICE Report of
21 Investigation, at 3;¹⁰ Declaration of Porter, at 3). LAPD's
22 seizure of the employment applications was entirely within the
23 scope of the warrant. The warrant also authorized the seizure of
24 records related to these individual's work schedules and
25 documents concerning payment to these individuals. Thus, the
26 seizure of a large quantity of documents was justified.

27
28 ¹⁰ This document was only recently generated and has not
yet been disclosed in discovery.

1 F. LAPD OFFICERS COULD HAVE SEIZED THE EMPLOYMENT APPLICATIONS
2 UNDER THE PLAIN VIEW DOCTRINE

3 In reviewing the documents for evidence of prostitution,
4 LAPD discovered evidence that the club hired women who did not
5 possess valid identification. Among the documents LAPD seized
6 pursuant to the warrant were the employment applications.

7 (Exhibit I, ICE Report of Investigation, at 3; Declaration of
8 Porter, at 3). These applications contained copies of California
9 identification cards, some of which were fraudulent on their
10 face. (Declaration of Porter, at 3). ICE checked the numbers on
11 the identification against the California Department of Motor
12 Vehicle ("DMV") database. (Exhibit I, at 3). These checks
13 revealed that 269 numbers appeared valid, but 358 numbers did not
14 exist or matched the names of other persons. (Id.).

15 The copies of identification cards attached to the
16 employment applications indicate that the 907 Club employed women
17 who did not possess valid identification, which was both a
18 violation of the club's Condition Use Permit and a violation of
19 law. See Los Angeles Municipal Code § 12.29 (violation of
20 conditional use permit). Other business records, such as the
21 employee payroll records, seized pursuant to the warrant,
22 evidenced that the club hired and continued to employ individuals
23 without valid identification. The club derived income from the
24 employment of such individuals, and thus, a very large portion of
25 the business records related to criminal activity, which served
26 as a basis to seize and retain these documents. See Kow, 58 F.3d
27 at 427.

28 //

1 LAPD could also have seized these documents under the plain
2 view doctrine. Under the plain view doctrine, a law enforcement
3 officer in possession of a search warrant to search a given area
4 for particular objects may also seize other objects of an
5 incriminating character which can be seen in plain view. Horton
6 v. California, 496 U.S. 128, 135 (1990). Thus, for such
7 documents to be admissible, the officer must have rightful access
8 to the objects, and their incriminating nature must be
9 immediately apparent. Id. at 136-37.

10 Inadvertence is not a requirement for an item to be seized
11 in plain view. Kentucky v. King, 131 S. Ct. 1849, 1859 (2011);
12 Horton, 496 U.S. at 141-42. An officer may seize evidence in
13 plain view even if the officer may be "interested in an item of
14 evidence and fully expec[t] to find it in the course of a
15 search." King, 131 S. Ct. at 1859 (quoting Horton, 496 U.S. at
16 138).

17 In this case, the search warrant authorized LAPD officers to
18 be present at the 907 Club and to search for documents within the
19 club's offices. (Exhibit A, at 7667). Thus, the officers had a
20 right to be in the location where documents concerning the
21 employment of individuals without valid identification could be
22 found. Copies of identification documents could readily be
23 determined to be evidence of criminal activity due to the poor
24 qualify of the counterfeit documents or by running checks against
25 the DMV databases. Other documents, such as employee payroll
26 records, that contain the name of the female employees who
27 possessed fraudulent identification documents would be readily
28 apparent by reading the documents.

At the time, LAPD officers executed the search warrant, LAPD knew that many women at the club did not have valid identification. However, this fact did not preclude LAPD from seizing documents related to employment of such women under the plain view doctrine. King, 131 S. Ct. at 1859; Horton, 496 U.S. at 138. Thus, giving all the foregoing, defendants' motion to suppress must fail on the merits.

G. THE EMPLOYMENT APPLICATIONS AND OTHER DOCUMENTS FROM THE 907 CLUB ARE ALSO ADMISSIBLE AS INEVITABLE DISCOVERY

Even if LAPD committed a Fourth Amendment violation that warrants suppression of at least some evidence, which did not occur, such evidence is still admissible under the inevitable discovery exception to the exclusionary rule. In Nix v. Williams, 467 U.S. 431 (1984), the Supreme Court adopted this exception to the exclusionary rule to "block setting aside convictions that would have been obtained without police misconduct." Id. at 443 n.4 and 444. Thus, if law enforcement officers following routine procedures would have inevitably uncovered the evidence at issue, the evidence should not be suppressed despite any constitutional violation. United States v. Young, 573 F.3d 711, 721 (9th Cir. 2009); United States v. Ramirez-Perez, 872 F.2d 1392 (9th Cir. 1989). In order for the inevitable discovery exception to apply, the government must show by a preponderance of evidence that there was a lawful alternative for discovering the evidence. United States v. Ruckes, 586 F.3d 713, 719 (9th Cir. 2009); United States v. Reilly, 224 F.3d 986, 994 (9th Cir. 2000).

11

1 In this case, ICE took lawful means to obtain evidence from
 2 LAPD through the issuance of an administrative subpoena and two
 3 grand jury subpoenas, discussed further below. (Exhibits E, F,
 4 and G). Hypothetically, if LAPD had not executed the warrant,
 5 the documents in question would have remained with the 907 Club.
 6 ICE would have then sought a federal search warrant to obtain
 7 these documents. (Declaration of Porter, at 5). Additionally,
 8 if LAPD had returned documents to the 907 Club, instead of
 9 turning them over to ICE, ICE again would have applied for a
 10 federal search warrant. (Id.).¹¹ ICE would have then obtained
 11 the documents at issue. Accordingly, the evitable discovery
 12 exception to the exclusionary rule should apply in this case.

13 H. LAPD OFFICERS PROPERLY TURNED OVER THE 907 CLUB MATERIALS TO
 14 ICE PURSUANT TO ADMINISTRATIVE AND GRAND JURY SUBPOENAS

15 Defendants claim that, following a search of all materials
 16 seized, LAPD was required to return these materials to the 907
 17 Club. (Defendant's motion at 10, 11). Defendants also claim
 18 that LAPD improperly turned over the materials to ICE.
 19 (Defendant's motion at 32). Defendants provide no authority in
 20 support of this portion of their arguments. In fact, relevant
 21 case law indicates that LAPD properly turned over the materials
 22 to ICE.

23 The Ninth Circuit has determined that "once an item in an
 24 individual's possession has been lawfully seized and searched,

25
 26 ¹¹ By mid-December 2010, probable cause clearly existed to
 27 establish that the 907 Club hired and continued to employ illegal
 28 aliens and that documents reflected such employment existed. For
 a full discussion of this evidence, see Agent Porter's
 declaration in support of the complaint and arrest warrants.

1 subsequent searches of that item, so long as it remains in the
2 legitimate uninterrupted possession of the police, may be
3 conducted without a warrant.'" United States v. Johnson, 820 F.2d
4 1065, 1072 (9th Cir. 1987) (quoting United States v. Burnette,
5 698 F.2d 1038, 1049 (9th Cir. 1983)). Thus, once items are
6 seized, an individual could no longer reasonably expect that the
7 items would be free from further examination by law enforcement
8 officers, including officers from other law enforcement agencies.
9 Johnson, 820 F.2d at 1072.

10 In Hell's Angels Motorcycle Corp. v. McKinley, 360 F.3d 930
11 (9th Cir. 2004), the Ninth Circuit addressed a virtually
12 identical situation. In McKinley, local law enforcement officers
13 executed a search warrant against a Hell's Angels clubhouse to
14 search for evidence relating to a murder and a robbery. Id. at
15 931. Even though two truck loads of property was seized, none of
16 it was used in a state prosecution. Id. After the search and
17 seizure, an FBI agent served an administrative subpoena on the
18 local authorities, and pursuant to this subpoena, certain items
19 were turned over to the FBI. Id. at 931-32.

20 The Hell's Angels subsequently filed a Bivens action,
21 claiming, among other things, that 1) federal and local law
22 enforcement conspired to obtain an overly broad search warrant so
23 that the seized items could be turned over to the FBI, and 2) the
24 Hell's Angels were deprived of their property in violation of
25 their constitutional rights. Id. at 932. However, the Hell's
26 Angels did not challenge the legality of the initial search. Id.
27 at 934.

28 //

1 In McKinley, the Ninth Circuit determined that "the Hell's
2 Angels' reasonable expectation of privacy in the documents was
3 substantially reduced by the lawful seizure of the documents by
4 [local law enforcement]." Id. (citing United States v. Holtzman,
5 871 F.2d 1496, 1505 (9th Cir. 1989), overruled on other grounds,
6 Horton v. California, 496 U.S. 128 (1990)). Thus, the FBI's
7 subsequent search of the documents resulted in no constitutional
8 deprivation. Id.

9 In this case, defendants claim that the LAPD search warrant
10 was a ruse and subterfuge to turn over documents to ICE.
11 (Defendants' motion at 32-33). However, as discussed above,
12 LAPD's search of the 907 Club and seizure of documents was
13 appropriate. The local search warrant was not a ruse or
14 subterfuge, because LAPD's investigation was valid and had an
15 independent basis. See United States v. Washington, 797 F.2d
16 1461, 1470-71 (9th Cir. 1986). Furthermore, given the decision
17 in McKinley, ICE was not barred from obtaining documentation from
18 the LAPD through the use of administrative and grand jury
19 subpoenas.

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1 IV.

2 CONCLUSION

3 For the reasons stated above, the government respectfully
4 requests that the Court deny defendants' motion to suppress on
5 the ground that defendants lack standing. The government also
6 respectfully requests that the Court deny the motion to suppress
7 evidence seized from the 907 Club on substantive grounds.

8 DATED: September 20, 2011 Respectfully submitted,

9 ANDRÉ BIROTTÉ JR.
10 United States Attorney

11 ROBERT E. DUGDALE
12 Assistant United States Attorney
13 Chief, Criminal Division

14 _____ /s/
15 JAMES M. LEFT
16 Special Assistant United States
17 Attorney

18 Attorneys for Plaintiff
19 United States of America